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Supreme Court, U.S.
FILED

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NO. _____

IN THE SUPREME COURT
OF THE
UNITED STATES OF AMERICA

October 1995 Term

Randolph J. Berend and Janis G. Berend
Petitioners

v

THE COMMISSIONER OF INTERNAL REVENUE
Respondent

Petitioner for Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit

PETITION FOR A WRIT OF CERTIORARI

Randolph and Janis Berend
Appearing Pro Se
Petitioners
1015 S. Gaylord #128
Denver, Colorado [P.Z. 80209]

45 pp

QUESTIONS PRESENTED

This Petition raises four questions:

1. What is the significance of the fact that in the Internal Revenue Code, the definition of the term "United States" is defined in different ways for different subtitles within the Code and the Act?

2. Has the definition of "income" changed since the Supreme Court defined it in Lucas v Earl, 281 US 111 (1930) or has its application changed?

3. As the original Act of Congress, as published in the Statutes at Large, confirms the limitations of 26 USC 6201, [authority to assess a tax liability] is the IRS bound by such limitations and can the courts expand such limitations?

4. Were sanctions awarded against petitioners for such questions justified?

LIST OF PARTIES AFFECTED

The Petitioners, pro se:

Mr. and Mrs. Randolph J. Berend,
1015 S. Gaylord, Denver, Colorado, Postal Zone 80209,

Telephone 303-757-3027

The Respondent, The Commissioner of the Internal Revenue Service, through the United States, represented by the Department of Justice,

Loretta C. Argrett, Charles E. Brookhart, Tamara L. Schottenstein,
P. O. Box 502, Washington D.C., 20044,
Telephone 202-414-3564

TABLE OF CONTENTS

Questions Presented 2

List of Parties Affected 3

Table of Authorities 5

Opinions Below 6

Statement of Jurisdiction 7

Statutory Provisions Involved 8

Statement of the Case 9

Reasons for Granting the Writ 11

Argument:

First Issue: Are the different definitions of the "United States" significant in Title 26? 12

Second Issue: Has the definition of "Income" changed since the Supreme Court decision of 1930? 15

Third Issue: Is it significant that the Congressionally authorized assessment powers of the IRS through 26 USC 6201 is limited to liabilities under the stamp tax and filed returns? 19

Fourth Issue: Do the questions presented herein justify sanctions for being frivolous?.....23

Conclusion 25

TABLE OF AUTHORITIES

{Pertinent text set forth in the Appendix herein for the following statutes]

26 USC 638 8,13
26 USC 3306 (j) 8,13
26 USC 3121 (e) 8,13
26 USC 4121 (d)(3).....8,13
26 USC 4132 (a)(7) 8,13
26 USC 4262 (c)(1).....8,13
26 USC 4462 (b)(3).....8,13
26 USC 4612 (a)(4)(A).....8,13
26 USC 6103 (b)(5).....8,13
26 USC 7701 (a)(9)(10).....8,13
Revised Statutes 3182.....8
26 USC 6201.....8,20
Hooven & Allison v Evatt, 324 US 652 11
Lucas v Earl, 281 US 111 11
Ng fung Ho v Edward White, 259 US 938 15
Connor v US, 303 F. Supp. 1187.....16
CIR v Glenshaw Glass, 348 US 426, 431.....17
Public Law 86-624 ¶18(c).....14
Public Law 86-70 ¶22 (a).....14
Crosse v Board of Supervisors, 221 A. 2d 431.....14
HR Report No. 1337, 83d Congress 2d Sess. a 18; 17
Senate Report No. 1622, 83d Congress 2d Sess.168.....17
Helvering v Reynolds, 306 US 110.....19

OPINIONS BELOW

Petitioners petitioned in tax court on April 18, 1994, under the provisions of tax court rule 146, which provides for adjudication of issues at law of foreign jurisdictions. Petitioners asserted foreign jurisdiction with reliance on the definition of "United States" in Title 26 and 28 USC 297, whereby the states of America are "countries" and 26 USC 6213. Petitioners were dismissed from tax court on July 13, 1994, for alleged failure to state a claim for which relief could be granted in the format required by tax court rule 34(b). Petitioners objected in that they asserted their position itemized the determinations clearly, as required by tax court rule 34(b). Tax Court imposed sanctions against petitioners. Upon timely appeal to the United States Court of Appeals for the 10th Circuit, the decision of the tax court was affirmed on June 30, 1995 with a rehearing denied on August 1, 1995. The United

States Court of Appeals' decision contains only dictum and does not cite any court decisions or statutes in support of their decision. The denial of the petitioners' motion for rehearing is likewise void of statutory authority and court decisions. While it can be assumed that the Court Orders to dismiss petitioners were influenced by the court decisions cited in the Commissioner's brief, the Commissioner's brief cited only appellate decisions with the exception of two Supreme Court decisions, both of which support Petitioners' claims.

STATEMENT OF JURISDICTION

The decision of the United States Court of Appeals for the 10th Circuit was entered June 30, 1995 affirming the decision of the United States Tax Court entered on July 13, 1994. The jurisdiction of the United States Court of Appeals was invoked pursuant to 26 USC 7482 and Tax Court jurisdiction was asserted through 26 USC 6213. A

Motion for Reconsideration was filed with the United States Court of Appeals on July 11, 1995. The final denial of a rehearing was entered on **August 1, 1995.**

Jurisdiction is proper in this court because of 28 USC 1254(1) as quoted in 26 USC 7482, and because this Petition is filed within 90 days of the date of the final order denying rehearing.

STATUTORY PROVISIONS INVOLVED

This case involves the Federal Regulation, 26 CFR 1.1-1, making every "U.S. citizen" liable to file and pay "income tax" if their "income" reaches a minimum level, and it's relationship to the identification of the "United States" as defined in 26 USC 638, 3306, 3121, 4121, 4132, 4262, 4462, 4612, 6103 and 7701. This case also involves the original Act of Congress of 1868, Section 3182 of the Revised Statutes, which is now 26 USC 6201 [authority to assess a tax].

STATEMENT OF THE CASE

A writ of certiorari is requested in this case to allow this Court to review the lower court's opinion which refused to address and refute the issues Petitioners presented with Supreme Court decisions and unamended Acts of Congress. Can Supreme Court decisions and Acts of Congress, properly applied in the relevant jurisdiction, be ignored in favor of preserving a custom and policy?

Having researched the tax laws and related court decisions, the Petitioners determined that they had not received enough income to report to the IRS in 1992 and therefore did not file. Petitioners relied on the term "income" to mean profit and gain as defined by the Supreme Court and it has not, as yet, been overturned. With such reliance, Petitioners calculated that portion of their receipts which was profit and gain [state tax refunds, interest and dividends] separate from receipts paid for their

labor [which payment for labor was not profit and gain]. Further, Petitioners relied on the fact that the Code specifically places a mandatory requirement to file on those who are citizens of "United States" - but then limits the definition of "United States". There is no provision for filing requirements, for those not qualifying as citizens of the "United States" as identified by the Code.

Petitioners also challenged the statute by which the IRS purported to assess a tax liability against Petitioners because 26 USC 6201 limits the IRS's authority to assess.

Receiving no Income Tax Return from Petitioners for 1992, the IRS assessed Petitioners a presumed liability which included amounts paid to Petitioners for their labor. When Petitioners set forth an objection to such amounts, the tax court ruled against them, stating that such objections were not valid claims for a redetermination pursuant to Tax Court Rule 34(b).

The 10th Circuit Court of Appeals upheld the tax court decision which has resulted in the Petition herein.

REASONS FOR GRANTING THE WRIT

I. The decision of the United States Court of Appeals for the District of Colorado conflicts with decisions from the United States of America Supreme Court on the subject of income and identification of citizenship status. Specifically, Lucas v Earl, 281 US 111; Ng Fung Ho v Edward White, 259 US 938; Hooven v Allison Co. v Evatt., 324 US 652, US v Cruikshank, 92 US 588 and the Buck Act, all support the Petitioner's argument regarding the significance of the interpretation of "United States" and "income" but the lower courts chose to ignore these decisions in favor of various appeals court decisions which are in direct contradiction to this Supreme Court. If it is time to overrule such Supreme Court decisions, then such should be done rather than leave Americans in peril with

reliance on these Supreme Court decisions.

II. Challenges to the Internal Revenue Code by many taxpayers, supported with law, have reached critical proportions and demand attention by this Supreme Court because the lower courts ignore these issues.

III. The Government's policies which are enforced with only lower court dictum - without support in law or statute - have created a social climate which compromises, threatens, challenges and mocks the effectiveness and credibility of our unique, Republican, form of government.

PETITION FOR A WRIT OF CERTIORARI

ARGUMENT:

1. First issue: The definition of the "United States" within Title 26.

The Code, through regulation 26 CFR 1.1-1, requires every "U.S. citizen" [presumably every "United States citizen" lest the regulation be construed to impose a

liability upon a non existent/unidentified entity - e.g. what is "U.S."?] to file and pay "income tax" if their "income" reaches a minimum level. However, "United States" is defined in various ways in the Code in Sections 638, 3306(j), 3121(e), 4121(d)(3), 4132(a)(7), 4262(c)(1), 4462(b)(3), 4612(a)(4)(A), 6103 (b)(5) and 7701(a)(9),(10) and the Buck Act. Only sections 4612(a)(4)(A) in Subtitle D, and 6103(b)(5) in Subtitle F, defines "United States" as the "50 States". Therefore, the "50 states" are not part of the "United States" definition for Subtitle A Income Tax, that subtitle under which this litigation began. Further, the "one liable" (referenced in section 6001) is identified in Section 2603 as a transferee, and Section 4401 as a gambler, and Section 4972 as a employer contributing to pension plans, and lastly, in Section 5005 as a distributer of alcohol, none of which pertains to Petitioners. Because Petitioners relied on the Code's definition of the

jurisdiction and identification of the one liable, they determined that "United States" as it pertains to Subtitle A of the Internal Revenue Code, did not include the 50 states, and therefore, imposed no mandatory liability on those who live in the "50 states". Further support of this conclusion is found in 26 USC 3121(e), whereby Alaska and Hawaii were specifically dropped from the definition of "United States" in 1959, after they became part of the 50 states of the Republic, [see Public Law 86-624 ¶18(c) and Public Law 86-70 ¶ 22(a)]. In relation to this logic, Petitioners relied on Supreme Court decisions which identified the fact that there are different definitions of the "United States", with different applications, Hooven & Allison Co. v Evatt, 324 US 652, 65 S.Ct. 870, 889; U.S. v. Cruikshank, 92 US 588, 590; Downes v Bidwell, 182 US 244; see also Crosse v Board of Supervisors, 221 A. 2d 431.

Further, the Supreme Court held in Ng Fung Ho v

Edward White, 259 US 938 (1922), that it is improper to adjudicate an action without ascertaining citizenship status if such status affects the rights of the parties. In this case, it was imperitive that "United States" as applicable to Subtitle A of Title 26 be defined to ascertain the "United States" citizen that is intended.

Rather than ignore the questions presented regarding the Code's definition of the "United States", the courts below should have settled the issue prior to dismissal.

2. Second Issue: Has the definition of "income" changed since the Supreme Court defined it in Lucas v Earl 281 US 111 (1930)? To wit:

> "The claim that salaries, wages and compensation for personal services are to be taxed as an entirety and therefore must be returned by the individual who has performed the services which produced the gain ***is without support either in the language of the Act or in the decisions of the courts construing it. Not only this, but it is directly opposed to provisions of the Act and to regulations of the U.S. Treasury Department, which either prescribe or permit that compensation***

> ***for personal services not be taxed as an entirety and not be returned by the individual performing the services.*** **It is to be noted that by the language of the Act it is not salaries, wages or compensation for personal services that are to be included in gross income. That which is to be included is gains, profits and income DERIVED from salaries, wages or compensation for personal service".** Lucas v Earl, 281 US 111 (1930).

In 1969, in Connor v U.S., 303 F. Supp. 1187 (1969), the court stated:

> **"There must be gain before there is "income" within the 16th Amendment", and**
>
> **"Under Internal Revenue Code of 1954, if there is no gain, there is no "income".**

In Connor, the court held that a 'reimbursement' is not income. Earnings are reimbursement for skill and time, especially given the fact that the reimbursement or earnings are directly related to the amount of time and education required to attain the skill.

In Connor v US, 303 F. Supp. 1187, (1969), the Court ruled,

> "[under 61a of the Code] ...If there is not gain there is not income, Congress has taxed income **and not compensation", and "There must be gain before there is "income" within the Sixteenth Amendment."**

In Connor, the court makes specific reference to "the income which Congress is permitted CONSTITUTIONALLY to tax".

The issue today in 1995, is whether or not the definition of "income" has changed over the years.

If Congress reenacts a Statute without change, then it "indicates congressional satisfaction with that holding", Commissioner v Glenshaw Glass, 348 U.S. 426, 431. It was clearly exposed in the House of Representative Report No. 1337, 83d Cong., 2d Sess. a18; S. Rep. No 1622, 83d Cong, 2d Sess. 168, that the intent of Congress was not to change the definition of "income" from the original Section, 22(a) of the 1939 Code, stating:

> **"This section corresponds to section 22(a) of the 1939 Code. While the language in existing**

> **section 22(a) has been simplified, the all-inclusive nature of statutory gross income has not been affected hereby...Section 61(a) provides that gross income includes 'all income from whatever source DERIVED'. This definition is based upon the 16th Amendment and the word 'income' is used in its CONSTITUTIONAL sense",**
>
> and
>
> **"Income is nothing more nor less than realized gain. It is not synonymous with receipts".**

Earnings for labor, which are the property of the Petitioners, are receipts which go entirely to expenses for living, and unless invested, are not "income", 47 CJS Internal Revenue para. 98.

The Constitutional sense of "income" has always been identified as that which is profit and gain, and not labor, as it would violate Article I Section 9 of the Constitution. Certainly the "all-inclusive" phrase is justified in that any source of money can be identified, even that from the tooth fairy, as long as it

is used, or invested, to derive income, "income" being profit and gain.

In Helvering v Reynolds, 306 US 110, it was exposed that the definition of "income" as it stood then in 1939, had not been changed from 1928, when it was first defined, and stated:

> **"In the meantime, successive revenue acts have reenacted, without alteration, the definition of gross income as it stood in the Acts of 1913, 1916 and 1918."**

It cannot be ignored that these court decisions have not been overturned, nor has an amendment changed the meaning of Section 61a of 26 USC, which was enacted without change from Section 22 (a).

Petitioners have no "gain" from their earnings, just an equal exchange of value for value, and reimbursement for expended time, education and skill, and the cost of staying alive.

3. Third Question: Does The IRS Authority to Assess

under 26 USC 6201 extend to assessments OTHER THAN those under Stamp Tax or filed Returns?

Section 6201 of the Internal Revenue Code reads as follows:

"ASSESSMENT AUTHORITY

(a) AUTHORITY OF THE SECRETARY - The Secretary is authorized and required to make the inquiries, determinations, and assessments **of all taxes .....imposed by this title,** or accruing under any former internal revenue law, **which have not been duly paid by stamp....** Such authority shall extend to and include the following:

(1) Taxes shown on return ...

(2) Unpaid taxes payable by Stamp..."

For explanation as to a "stamp tax", the Internal Revenue Act, of 1878, Chapter 9, Title 35, provides such which has survived today as the tax on alcohol, tobacco and firearms as confirmed in Chapter 69 of the Internal Revenue Code. Labor was not included as a taxable item. 26 USC 6201 provides the IRS with authority to assess taxes which should be paid by "Stamp" or self assessed

taxes reported by the Taxpayer.

To understand whether or not this statute has been expanded by Congress one must investigate the history of the statute and look for amendments.

Section 6201 is derived from section 3182 of the Revised Statutes, Act of Congress, 1872, which became Section 3640 and 3647 of the 1939 Code. The types of taxes authorized are described in Statutes at Large enacted on December 24, 1872, Chap. 13, Sec. 2., vol 17, page 402, which describes those taxes as cotton, tobacco, and distilled spirits. An inspection of the Federal Register and House and Senate Reports reveals that the only change to the law for assessment, 26 USC 6201, permitted expansion of the assessment authority to include recovery of 'bounced' checks through assessment, and immediate assessment of amounts due because of mathematical error, see Appendix herein.

The Commissioner alleges that citing an old "1868" statute is non relevant to matters in the year 1995 - Petitioners disagree. Unless a law is revised or repealed, it stands in force and effect.

While the language in the Code that limits assessment authority is perfectly clear, it is further confirmed through an inspection of the original Act of Congress which clarifies the intent of Congress when giving legislative authority to the IRS to assess taxes. The original Act of Congress is located in the Statutes at Large, not the Code.

> "United States Code is not enacted as Statute, nor can it be construed as such, it being only prima facie statement of statute law; ... if construction is necessary, recourse **must be had to original statutes,** Murrell v Western Union Tel. Co. (1947, CA5 Fla) 160 F.2d 787.

> "United States Code does not prevail over Statutes at Large when the two are inconsistent," SEE Stephan v US (1943), 319 US 423, 87 L Ed 1490. 63 S. Ct. 1135; Peart v Motor Vessel Bering Explorer (1974, DC Alaska) 373 F. Supp. 927.

"Codification is not law....it is the legislation of statute which is the law", US V Zuger, 602 F. Supp. 889 (1984), 755 F. 2d 915, 474 US 805.

It appears the Commissioner has expanded the use of his assessment authority through regulations, however, regulations do not prevail when inconsistent with the statute as the Commissioner cannot enact law, Helvering v Sabine Transportation Co., 318 US 306, 311; 63 S. Ct 459, 572; US v Mersky, 361 US 431.

Therefore, without voluntary self assessment as in the case of these Petitioners who are not dealers in cotton, alcohol, tobacco, or distilled spirits, the IRS has no lawful authority to assess an income tax against them if the Petitioners do not self assess.

4. Fourth Question: Are the questions presented here "frivolous"?

Petitioners have used facts and law to present the questions herein and such conflicts at law cannot qualify as frivolous and be worthy of sanctions.

Since these issues, as related to the Statutes at Large and the ACTS of Congress, have never been brought by taxpayers before, they cannot be deemed "frivolous". Since Petitioners provided the law and fact upon which they rely to assert their claims, the issues cannot be deemed "unfounded" or "patently meritless". Without the necessary elements of a frivolous pleading, that is, (a) frivolous argument, or (b) argument unfounded in law or fact, patently meritless, or (c) improper motive, Dean v ARA, 124 F.R.D. 224, 890 F. 2d 1166; Jarmuth v Turetsky, 815 F. Supp. 4; Mossman v Roadway, 789 F. 2d 804; Carte Blanche v Carte Blance International, 683 F. Supp. 945, the court cannot justifiably impose sanctions.

However, the lower courts below did impose sanctions, in the combined amount of $4000.00. This was unjustified.

CONCLUSION

Petitioner's have set forth four issues herein: (a) the fact that the term "United States" is conspicuously identified with - or without - the "50 states" within the different subtitles of the Internal Revenue Code; (b) the fact that the term "income", defined as profit and gain by the Supreme Court has not been overturned since 1930, and has been supported by a United States District Court in 1969; (c) that fact that if one does not voluntarily file a return to the IRS, then there is no statutory authority for the IRS to assess a tax liability against a taxpayer, UNLESS that taxpayer is dealing in cotton, alcohol, tobacco or firearms pursuant to the assessment limitations of 26 USC 6201 and (d) the fact that these questions are valid and supported by law, precludes santions and the lower court should not have assessed sanctions against these petitioners for bringing such questions to the court

UNLESS there is some law that discloses a "custom and policy" which supersedes published law.

The Writ should be granted to address the foregoing issues for the benefit of all Americans.

Respectfully submitted:

Randolph Berend Janis Berend
1015 S. Gaylord
Denver Colorado [P.Z. 80209]

APPENDIX

1. Tax Court decision, dismissing Petitioners.

2. Court of Appeals, District of Colorado, decision, affirming dismissal.

3. Court of Appeals, District of Colorado, denying reconsideration dated August 1, 1995.

4. Pertinent Text of Code Sections cited in Writ.

Appendix Item 1

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

JANIS G. BEREND
Petitioner

v Docket No. 6392-94

COMMISSIONER OF INTERNAL REVENUE
Respondent

ORDER OF DISMISSAL AND DECISION

This matter is before the Court on respondent's Motion to Dismiss for Failure to State a Claim and to Impose a Penalty Under Section 6673, filed May 27, 1994. The facts relevant to the disposition of this matter are summarized as follows. [1]

		Additions to Tax	
Year	Deficiency	Sec. 6651(a)(1)	Sec.6654(a)
1992	$6,962	$639	$176

Petitioner filed a petition for redetermination with

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[1] Section references are to the internal Revenue Code as amended. Rule references are to the Tax Court Rules of Practice and Procedure.

this court on April 18, 1994.[2] The Petition includes an allegation that "There is no provision for IRS to assess under [section] 6201 for Subtitle A [income] tax * * *."

As indicated, respondent filed a motion to dismiss on the ground that the petition fails to state a claim upon which relief can be granted. By order dated June 1, 1994, petitioner was directed to file, by June 28, 1994, a proper amended petition setting forth clear and concise assignments of each error allegedly made by respondent in the determnination of the deficiency and the additions to tax and the facts upon which the assignments of error are based.

On June 24, 1994, petitioner filed an objection to respondent's motion to dismiss, as well as an amendment to petition. In these documents, petitioner advances a number of specious arguments, principally that wages do not constitute income.

A hearing on the pending motion was held in Washington, D.C., on July 6, 1994. Counsel for respondent appeared at the hearing and presented argument on the motion. Petitioner did not appear at the hearing nor did petitioner file a written statement in lieu of attendance at the hearing pursuant to Rule 50(c).

Rule 34(b) provides that a petition in a deficiency

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[2] At the time the petition was filed herein, petitioner resided in Denver, Colorado.

action shall contain clear and concise assignments of each and every error which the taxpayer alleges to have been committed by the Commissioner in the determination of the deficiency. Further, the petition shall contain clear and concise lettered statements of the facts on which the taxpayer bases the assignments of error.

The petition filed herein contains time-worn tax protestor rhetoric and does not comply with Rule 34(b). See Abrams v Commissioner, 82 T.C. 403 (1984); Rowlee v Commissioner, 80 T.C. 1111 91983); McCoy v Commissioner, 76 T.C. 1027 (1981); affd. 696 F. 2d 1234 (9th Cir. 1983); Karlin v Commissioner, T.C. Memo 1990-496. The Court's order dated June 1, 1994, provided petitioner with a further opportunity to allege specific facts concerning her liability for the taxable year in dispute. Petitioner failed to properly respond to the Court's order.

Our Rules provide that failure of a petition to conform with the requirements for proper pleadings may be gounds for dismissal. Rule 34(a)(1) and 123(b). Because petitioner failed to raise an argument on which relief may be granted in her petition and in her amendment to petition, respondent's motion to dismiss will be granted.

Where a petition is filed with this Court primarily for purposes of delay, we have the authority to impose a penalty on the offending taxpayer pursuant to section 6673(a). Rowlee v Commissioner, supra. Here we are convinced that the petition in this case was filed primarily for purposes of delay. Accordingly, we will also grant respondent's motion to impose a penalty.

Premises considered, it is

ORDERED: That so much of respondent's Motion to Dismiss for Failure to State a Claim to and Impose a Penalty Under Section 6673, filed May 27, 1994, that moves to dimiss is granted and this case is hereby dismissed for failure to state a claim upon which relief can be granted. It is further

ORDERED AND DECIDED: That there is a deficiency in and additions to petitioner's Federal income tax for the following year and in the following amount:

		Additions to tax	
Year	Deficiency	Sec. 6651(a)(1)	Sec. 6654(a)
1992	$6,962	$639	$176

It is further

ORDERED: That so much of respondent's Motion to Dismiss is for Failure to State a Claim and to Impose a Penalty Under Section 6673, filed May 27, 1994, that moves to impose a penalty is granted and petitioner shall pay to the United States a penalty in the amount of $1,250.

(Signed) Robert N. Armen, Jr.
Special Trial Judge

Entered: July 13 1994

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

RANDOLPH J. BEREND
Petitioner

v Docket No. 6391-94

COMMISSIONER OF INTERNAL REVENUE
Respondent

ORDER OF DISMISSAL AND DECISION

This matter is before the Court on respondent's Motion to Dismiss for Failure to State a Claim and to Impose a Penalty Under Section 6673, filed May 27, 1994. The facts relevant to the disposition of this matter are summarized as follows. [1]

		Additions to Tax
Year	Deficiency	Sec. 6651(a)(1)
1992	$4,260	$100

Petitioner filed a petition for redetermination with

[1] Section references are to the internal Revenue Code as amended. Rule references are to the Tax Court Rules of Practice and Procedure.

this court on April 18, 1994.[2] The Petition includes an allegation that "There is no provision for IRS to assess under [section] 6201 for Subtitle A [income] tax * * *."

As indicated, respondent filed a motion to dismiss on the ground that the petition fails to state a claim upon which relief can be granted. By order dated June 1, 1994, petitioner was directed to file, by June 28, 1994, a proper amended petition setting forth clear and concise assignments of each error allegedly made by respondent in the determination of the deficiency and the additions to tax and the facts upon which the assignments of error are based.

On June 24, 1994, petitioner filed an objection to respondent's motion to dismiss, as well as an amendment to petition. In these documents, petitioner advances a number of specious arguments, principally that wages do not constitute income.

A hearing on the pending motion was held in Washington, D.C., on July 6, 1994. Counsel for respondent appeared at the hearing and presented argument on the motion. Petitioner did not appear at the hearing nor did petitioner file a written statement in lieu of attendance at the hearing pursuant to Rule 50(c).

Rule 34(b) provides that a petition in a deficiency action shall contain clear and concise assignments of each

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[2] At the time the petition was filed herein, petitioner resided in Denver, Colorado.

and every error which the taxpayer alleges to have been committed by the Commissioner in the determination of the deficiency. Further, the petition shall contain clear and concise lettered statements of the facts on which the taxpayer bases the assignments of error.

The petition filed herein contains time-worn tax protestor rhetoric and does not comply with Rule 34(b). See Abrams v Commissioner, 82 T.C. 403 (1984); Rowlee v Commissioner, 80 T.C. 1111 91983); McCoy v Commissioner, 76 T.C. 1027 (1981); affd. 696 F. 2d 1234 (9th Cir. 1983); Karlin v Commissioner, T.C. Memo 1990-496. The Court's order dated June 1, 1994, provided petitioner with a further opportunity to allege specific facts concerning his liability for the taxable year in dispute. Petitioner failed to properly respond to the Court's order.

Our Rules provide that failure of a petition to conform with the requirements for proper pleadings may be gounds for dismissal. Rule 34(a)(1) and 123(b). Because petitioner failed to raise an argument on which relief may be granted in his petition and in his amendment to petition, respondent's motion to dismiss will be granted.

Where a petition is filed with this Court primarily for purposes of delay, we have the authority to impose a penalty on the offending taxpayer pursuant to section 6673(a). Rowlee v Commissioner, supra. Here we are convinced that the petition in this case was filed primarily for purposes of delay. Accordingly, we will also grant respondent's motion to impose a penalty.

Premises considered, it is

ORDERED: That so much of respondent's Motion to Dismiss for Failure to State a Claim to and Impose a Penalty Under Section 6673, filed May 27, 1994, that moves to dimiss is granted and this case is hereby dismissed for failure to state a claim upon which relief can be granted. It is further

ORDERED AND DECIDED: That there is a deficiency in and additions to petitioner's Federal income tax for the following year and in the following amount:

Year	Deficiency	Additions to tax Sec. 6651(a)(1)
1992	$4,260	$100

It is further

ORDERED: That so much of respondent's Motion to Dismiss is for Failure to State a Claim and to Impose a Penalty Under Section 6673, filed May 27, 1994, that moves to impose a penalty is granted and petitioner shall pay to the United States a penalty in the amount of $1,250.

(Signed) Robert N. Armen, Jr.
Special Trial Judge

Entered: July 8, 1994

Appendix Item 2

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

JANIS G. BEREND and RANDOLPH J. BEREND

Petitioners - Appellants,

v Nos. 94-9017 & 94-9019
(D.C. Nos. 6391-94 & 6392-94)

COMMISSIONER OF INTERNAL REVENUE

Respondent - Appellee.

ORDER AND JUDGMENT*

Before TACHA, LOGAN, and KELLY, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the

would not materially assist the determination of this appeal. See Fed. R. App. P. 349a); 10th Cir. R. 34.1.9. The case therefore ordered submitted without oral argument.

These appeals are from orders of the Tax Court that dismissed taxpayers' actions for failure to state claims upon which relief could be granted and imposing penalties under ¶ 6673(a) for filing petitions primarily for the purposes of delay. Taxpayers appeal on the grounds that the tax court erred in finding that they were responsible for the payment of taxes determined by the Commissioner of Internal Revenue to be tax deficiencies and additions to tax for these taxpayers for the year 1992. Appellee moves on appeal for sanctions against the appellants for bringing frivolous appeals. We affirm and impose sanctions.

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* citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of the court's General Order filed November 29, 1993. 151 F.R.D. 470.

Neither appellant filed a federal income tax return for the year 1992. As a result of reports filed by third-party payors the Internal Revenue Service (Commissioner) determined that these taxpayers had failed to report substantial amounts of income for 1992. Arguing numerous grounds for their failure to report the taxes, taxpayers sought redetermination of the deficiencies asserted against them. After filing amended petitions, the Tax Court determined that the petitions raised only frivolous legal contentions challenging the entire federal tax system and dismissed the taxpayers' petitions.

On appeal in this court, taxpayers persist in arguing generally that their earnings do not constitute taxable income, that numerous provisions of the tax code are not adequately defined in the statutes and that they are not subject to the taxes imposed on the redeterminations. Many of the arguments raised by the taxpayers have been

rejected by this and other courts. Taxpayers' allegations on appeal are without merit. It is clear that the Tax Court was correct in dismissing taxpayers' petitions for failure to state a claim and imposing penalties in both cases.

On appeal the Commissioner seeks sanctions for bringing a frivolous appeal. We agree with the Commissioner that the appeals in this case are frivolous and do not make a colorable claim of error with regard to the determinations of the Tax Court. This court has authority under 28 U.S.C. ¶ 1912 and Fed. R. App. P. 38 to award sanctions to an appellee. Sanctions are appropriate in this case where the result of the appeal is obvious from the outset and the arguments are wholly without merit. Braley v Campbell, 832 F. 2d 1504, 1510 (10th Cir. 1987). We therefore award sanctions in the amount of a total of $1,500.00 for both cases. Each taxpayer is responsible for $750.00 of this amount. The

order of the tax court is affirmed and sanctions are imposed as specified herein.

The mandate shall issue forthwith.

ENTERED FOR THE COURT

Deanell Reece Tacha
Circuit Judge

Filed: June 30, 1995

Appendix Item 3

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JANIS G. BEREND and RANDOLPH J. BEREND

Petitioners - Appellants,

v

Nos. 94-9017
& 94-9019

COMMISSIONER OF INTERNAL REVENUE

Respondent - Appellee.

ORDER AND JUDGMENT
Entered August 1, 1995

Before TACHA, LOGAN, and KELLY, Circuit Judges.

This matter comes on for consideration of appellants' petitions for rehearing.

Upon consideration whereof, the petitions for rehearing are denied by the panel that rendered the decision.

Entered for the Court

PATRICK FISHER, Clerk

By S/ L. Balzano
Deputy Clerk

Appendix Item 4

TEXT OF PERTINENT STATUTES

**26 USC 638:

"For the purposes of applying the provisions of this chapter (including sections 861(a)(3) and 863(a)(3) (in the case of performance of personal services) with respect to mines, oil and gas wells, and other natural deposits-

(1) **the term "United States"** when used in a geographical sense includes the seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the United States ....."

**26 USC 3306(j):

"(j) STATE, UNITED STATES, AND AMERICAN EMPLOYER. - For the purposes of this chapter -

(1) STATE. - **The term "state" includes the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands.**

(2) UNITED STATES - **The term "United States"** when used in a geographical sense includes the States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands."

**26 USC 3121(e):

"State, United States and Citizen. - For purposes of this chapter -

(1) State - **The term "State"** includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa.

(2) United States - **The term "United States"** when used in a geographical sense includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa."

**26 USC 4121(d)(3):

"(3) United States - **The term "United States"** has the meaning given to it by paragraph (1) of section 638."

**26 USC 4132(a)(7):

(7) **The term "United States"** has the meaning given such term by section 4612(a)(4)."

**26 USC 4262(c)(1):

"(1) Continental United States - **The term "continental United States"** means the District of Columbia and the States other than Alaska and Hawaii."

**26 USC 4462(b)(3):

"United States Mainland. - For the purposes of this subsection, **the term "United States mainland"** means the continental United States (not including Alaska)."

**26 USC 4612(a)(4)(A):

"(A) In General. - **The term "United States" means the 50**

States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands."

**26 USC 6103 (b)(5):

"(5) State - **The term "State" means -**

(A) **any of the 50 States,** the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and"

**26 USC 7701 (a)(9) and (10):

(9) United States - **The term "United States"** when used in a geographical sense includes only the States and the District of Columbia.

(10) State - **The term "State"** shall be construed to include the District of Columbia, where such construction is necessary to carry out provisions of this title.